

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

SLATER BRENNAN, Individually and On  
Behalf of All Others Similarly Situated,

Plaintiff,

v.

LATCH, INC. f/k/a TS INNOVATION  
ACQUISITIONS CORP., LUKE  
SCHOENFELDER, GARTH MITCHELL,  
and BARRY SCHAEFFER,

Defendants.

Case No. 1:22-cv-07473-JGK

MEMORANDUM OF LAW IN SUPPORT OF MOTION OF ELIZABETH TORRES  
FOR APPOINTMENT AS LEAD PLAINTIFF AND APPROVAL OF LEAD COUNSEL

TABLE OF CONTENTS

PRELIMINARY STATEMENT ..... 1

STATEMENT OF FACTS ..... 2

ARGUMENT..... 3

I. TORRES SHOULD BE APPOINTED LEAD PLAINTIFF ..... 3

    A. Torres Is Willing to Serve as Class Representative ..... 4

    B. Torres Has the “Largest Financial Interest” in the Action..... 5

    C. Torres Otherwise Satisfies the Requirements of Rule 23 ..... 6

    D. Torres Will Fairly and Adequately Represent the Interests of the Class and Is Not  
        Subject to Unique Defenses ..... 8

II. LEAD PLAINTIFF’S SELECTION OF COUNSEL SHOULD BE APPROVED ..... 9

CONCLUSION..... 10

**TABLE OF AUTHORITIES**

|  | <b>Page(s)</b> |
|--|----------------|
| <b>Cases</b>   |                |
| <i>Aude v. Kobe Steel, Ltd.</i> , No. 17-CV-10085 (VSB),<br>2018 WL 1634872 (S.D.N.Y. Apr. 4, 2018).....                   | 6, 7           |
| <i>Chahal v. Credit Suisse Grp. AG</i> , No. 18-CV-2268 (AT) (SN),<br>2018 WL 3093965 (S.D.N.Y. June 21, 2018) .....       | 5              |
| <i>Dookeran v. Xunlei Ltd.</i> , No. 18-cv-467 (RJS),<br>2018 WL 1779348 (S.D.N.Y. Apr. 12, 2018).....                     | 8              |
| <i>Foley v. Transocean Ltd.</i> ,<br>272 F.R.D. 126 (S.D.N.Y. 2011) .....  | 8              |
| <i>In re Cendant Corp. Litig.</i> ,<br>264 F.3d 201 (3d Cir. 2001).....  | 5              |
| <i>In re Comverse Tech., Inc. Sec. Litig.</i> , No. 06-CV-1825 (NGG) (RER),<br>2007 WL 680779 (E.D.N.Y. Mar. 2, 2007)..... | 5              |
| <i>In re Molson Coors Brewing Co. Sec. Litig.</i> ,<br>233 F.R.D. 147 (D. Del. 2005) .....                                 | 9              |
| <i>In re Olsten Corp. Sec. Litig.</i> ,<br>3 F. Supp. 2d 286 (E.D.N.Y. 1998) .....   | 5              |
| <i>In re Orion Sec. Litig.</i> , No. 08 Civ. 1328 (RJS),<br>2008 WL 2811358 (S.D.N.Y. July 7, 2008) .....                  | 7              |
| <i>In re Oxford Health Plans, Inc. Sec. Litig.</i> ,<br>182 F.R.D. 42 (S.D.N.Y. 1998) .....                                | 6              |
| <i>Janbay v. Canadian Solar, Inc.</i> ,<br>272 F.R.D. 113 (S.D.N.Y. 2010) .....  | 7              |
| <i>Kaplan v. Gelfond</i> ,<br>240 F.R.D. 88 (S.D.N.Y. 2007) .....  | 6              |
| <i>Kaplan v. S.A.C. Capital Advisors, L.P.</i> ,<br>311 F.R.D. 373 (S.D.N.Y. 2015) .....                                   | 9              |
| <i>Lax v. First Merchants Acceptance Corp.</i> , No. 97 C 2715,<br>1997 WL 461036 (N.D. Ill. Aug. 6, 1997) .....           | 5              |

*Nurlybaev v. ZTO Express (Cayman) Inc.*, No. 17-CV-06130 (LTS) (SN),  
2017 WL 5256769 (S.D.N.Y. Nov. 13, 2017) .....5

*Pirelli Armstrong Tire Corp. Retiree Med. Benefits Tr. v. LaBranche & Co.*,  
229 F.R.D. 395 (S.D.N.Y. 2004) .....5

**Statutes**

15 U.S.C. § 78u-4 ..... *passim*

Private Securities Litigation Reform Act of 1995 ..... *passim*

**Rules**

Fed. R. Civ. P. 23 ..... *passim*

Elizabeth Torres (“Torres”) respectfully submits this memorandum of law in support of her motion, pursuant to Section 21D(a)(3) of the Securities Exchange Act of 1934 (the “Exchange Act”), 15 U.S.C. § 78u-4(a)(3), as amended by the Private Securities Litigation Reform Act of 1995 (the “PSLRA”), for an Order: (1) appointing Torres as Lead Plaintiff on behalf of persons and entities that purchased or otherwise acquired Latch, Inc. (“Latch” or the “Company”) f/k/a TS Innovation Acquisitions Corp. (“TSIA”) securities between May 13, 2021 and August 25, 2022, inclusive (the “Class Period”) (the “Class”); and (2) approving proposed Lead Plaintiff’s selection of Pomerantz LLP (“Pomerantz”) as Lead Counsel for the Class.

#### PRELIMINARY STATEMENT

The Complaint in the above-captioned action (the “Action”) alleges that the above-captioned defendants (“Defendants”) defrauded investors in violation of the Exchange Act. Latch investors, including Torres, incurred significant losses following the disclosure of the alleged fraud, which caused Latch’s share price to fall sharply, damaging Torres and other Latch investors.

Pursuant to the PSLRA, the Court is to appoint as Lead Plaintiff the movant that possesses the largest financial interest in the outcome of the Action and that satisfies the requirements of Federal Rule of Civil Procedure 23 (“Rule 23”). 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I). During the Class Period, Torres purchased or otherwise acquired 1,300 shares of Latch securities, expended \$14,515 on her transactions in Latch securities, retained 1,300 of her shares of Latch securities, and, as a result of the disclosures revealing the misrepresentations and/or omissions during the Class Period, incurred losses of approximately \$13,173 in connection with her transactions in Latch securities. *See* Declaration of Jeremy A. Lieberman in Support of Motion (“Lieberman Decl.”), Exhibit (“Ex.”) A. Accordingly, Torres believes that she has the largest financial interest in the relief sought in the Action.

Beyond her considerable financial interest, Torres also meets the applicable requirements of Rule 23 because her claims are typical of absent Class members and because she will fairly and adequately represent the interests of the Class.

To fulfill her obligations as Lead Plaintiff and vigorously prosecute the Action on behalf of the Class, Torres has selected Pomerantz as Lead Counsel for the Class. Pomerantz is a nationally-recognized securities class action firm that has recovered billions of dollars on behalf of investors, as detailed in its firm resume, and is well qualified to serve as Lead Counsel in this Action.

Accordingly, Torres respectfully requests that the Court enter an order appointing her as Lead Plaintiff for the Class and approving her selection of Pomerantz as Lead Counsel for the Class.

#### STATEMENT OF FACTS

As alleged in the Complaint in the Action, Latch is an enterprise technology company that offers a full-building operating system, LatchOS, to address the essential requirements of modern buildings. It offers modules for delivery and guest management, as well as smart home and sensors. On or about June 3, 2021, Latch became a public entity via business combination with TSIA (the “Business Combination”).

On August 25, 2022, after the market closed, Latch revealed that it would restate financial statements for 2021 and the first quarter of 2022 due to revenue recognition errors related to the sale of hardware devices. Specifically, the Company stated that “certain revenue recognition errors occurred as a result of unreported sales arrangements due to sales activity that was inconsistent with the Company’s internal controls and procedures.”

On this news, Latch's stock fell \$0.13, or 12.2%, to close at \$0.95 per share on August 26, 2022, on unusually heavy trading volume.

Throughout the Class Period, Defendants made materially false and/or misleading statements, as well as failed to disclose material adverse facts about the Company's business, operations, and prospects. Specifically, Defendants failed to disclose to investors: (1) that there were unreported sales arrangements related to hardware devices; (2) that, as a result, the Company had improperly recognized revenue throughout fiscal 2021 and first quarter 2022; (3) that there were material weaknesses in Latch's internal control over financial reporting related to revenue recognition; (4) that, as a result of the foregoing, Latch would restate financial statements for fiscal 2021 and first quarter 2022; and (5) that, as a result of the foregoing, Defendants' positive statements about the Company's business, operations, and prospects were materially misleading and/or lacked a reasonable basis.

As a result of Defendants' wrongful acts and omissions, and the precipitous decline in the market value of the Company's securities, the plaintiff in the Action and other Class members have suffered significant losses and damages.

## ARGUMENT

### I. TORRES SHOULD BE APPOINTED LEAD PLAINTIFF

Torres should be appointed Lead Plaintiff because she has timely filed a motion for appointment as Lead Plaintiff, has the largest financial interest in the Action to her knowledge, and otherwise strongly satisfies the requirements of Rule 23.

The PSLRA requires the plaintiff who files an action governed by its provisions to publish a notice (the "Notice") to the class within 20 days of filing the action, informing putative class members of: (1) the pendency of the action; and (2) their right to file a motion for appointment as lead plaintiff within 60 days after publication of the Notice. *See* 15 U.S.C. § 78u-4(a)(3)(A)(i).

Additionally, the PSLRA directs courts to consider any motion to serve as lead plaintiff filed by class members in response to the Notice and to do so by the later of (1) 90 days after the date of publication, or (2) as soon as practicable after the Court decides any pending motion to consolidate. *See id.* § 78u-4(a)(3)(B).

Pursuant to the PSLRA, the Court “shall appoint” the “most adequate plaintiff” to serve as lead plaintiff. *Id.* § 78u-4(a)(3)(B)(i). The PSLRA provides a “[r]ebutable presumption” that the “most adequate plaintiff” is the person or group that:

- (aa) has either filed the complaint or made a motion in response to a notice . . . ;
- (bb) in the determination of the court, has the largest financial interest in the relief sought by the class; and
- (cc) otherwise satisfies the requirements of Rule 23 of the Federal Rules of Civil Procedure.

*Id.* § 78u-4(a)(3)(B)(iii)(I).

As set forth below, Torres satisfies all three of these criteria and thus is entitled to the presumption that she is the most adequate plaintiff of the Class and, therefore, should be appointed Lead Plaintiff for the Class.

#### A. Torres Is Willing to Serve as Class Representative

On August 31, 2022, counsel for the plaintiff in the Action caused the statutorily required Notice of the Action to be published over *Business Wire* pursuant to Section 21D(a)(3)(A)(i) of the PSLRA, which announced that this Action had been filed against Latch and other Defendants, and which advised investors in Latch securities that they had 60 days from the date of the Notice’s publication—*i.e.*, until October 31, 2022—to file a motion to be appointed as lead plaintiff. *See* Lieberman Decl., Ex. B.

Torres has filed the instant motion pursuant to the Notice and has attached a sworn Certification executed by her attesting that she is willing to serve as a representative for the Class



and to provide testimony at deposition and trial, if necessary. *See id.*, Ex. C. Accordingly, Torres satisfies the first requirement to serve as Lead Plaintiff of the Class.

B. Torres Has the “Largest Financial Interest” in the Action

The PSLRA requires a court to adopt a presumption that “the most adequate plaintiff . . . is the person or group of persons that . . . has the largest financial interest in the relief sought by the class.” 15 U.S.C. § 78u-4(a)(3)(B)(iii). To the best of her knowledge, Torres has the largest financial interest of any Latch investor or investor group seeking to serve as Lead Plaintiff. For claims arising under federal securities laws, courts frequently assess financial interest based upon the four factors articulated in the seminal case *Lax v. First Merchants Acceptance Corp.*: (1) the number of shares purchased during the class period; (2) the number of net shares purchased during the class period; (3) the total net funds expended during the class period; and (4) the approximate losses suffered. No. 97 C 2715, 1997 WL 461036, at \*5 (N.D. Ill. Aug. 6, 1997). In accord with other courts nationwide,<sup>1</sup> these *Lax* factors have been adopted and routinely applied by courts in this judicial district. *See, e.g., Chahal v. Credit Suisse Grp. AG*, No. 18-CV-2268 (AT) (SN), 2018 WL 3093965, at \*4 (S.D.N.Y. June 21, 2018); *Nurlybaev v. ZTO Express (Cayman) Inc.*, No. 17-CV-06130 (LTS) (SN), 2017 WL 5256769, at \*1 (S.D.N.Y. Nov. 13, 2017); *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Tr. v. LaBranche & Co.*, 229 F.R.D. 395, 404-05 (S.D.N.Y. 2004).

---

<sup>1</sup> *See, e.g., In re Cendant Corp. Litig.*, 264 F.3d 201, 262 (3d Cir. 2001); *In re Olsten Corp. Sec. Litig.*, 3 F. Supp. 2d 286, 295 (E.D.N.Y. 1998); *accord In re Comverse Tech., Inc. Sec. Litig.*, No. 06-CV-1825 (NGG) (RER), 2007 WL 680779, at \*6-\*8 (E.D.N.Y. Mar. 2, 2007).

During the Class Period, Torres: (1) purchased or otherwise acquired 1,300 shares of Latch securities; (2) expended \$14,515 on her transactions in Latch securities; (3) retained 1,300 of her shares of Latch securities; and (4) as a result of the disclosures of the fraud, incurred losses of approximately \$13,173 in connection with her Class Period transactions in Latch securities. *See* Lieberman Decl., Ex. A. To the extent that Torres possesses the largest financial interest in the outcome of this litigation, she is the presumptive “most adequate” plaintiff. 15 U.S.C. § 78u-4(a)(3)(B)(iii)(I)(bb).

C. Torres Otherwise Satisfies the Requirements of Rule 23

Section 21D(a)(3)(B)(iii)(I)(cc) of the PSLRA further provides that, in addition to possessing the largest financial interest in the outcome of the litigation, a lead plaintiff must “otherwise satisf[y] the requirements of Rule 23 of the Federal Rules of Civil Procedure.” Rule 23(a) provides that a class action may proceed if the following four requirements are satisfied:

(1) the class is so numerous that joinder of all members is impracticable; (2) there are questions of law or fact common to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect the interests of the class.

Fed. R. Civ. P. 23(a).

In making its determination that a lead plaintiff satisfies the requirements of Rule 23, the Court need not raise its inquiry to the level required in ruling on a motion for class certification. Instead, “[t]he parties moving for lead plaintiff are only required to make a prima facie showing that they meet [the requirements of] Rule 23.” *Aude v. Kobe Steel, Ltd.*, No. 17-CV-10085 (VSB), 2018 WL 1634872, at \*3 (S.D.N.Y. Apr. 4, 2018); *see also Kaplan v. Gelfond*, 240 F.R.D. 88, 94 (S.D.N.Y. 2007) (“[A]t this stage of the litigation, only a preliminary showing of typicality and adequacy is required.”). Moreover, “[t]ypicality and adequacy of representation are the only provisions relevant to a determination of lead plaintiff under the PSLRA.” *In re Oxford Health*

*Plans, Inc. Sec. Litig.*, 182 F.R.D. 42, 49 (S.D.N.Y. 1998); *see also Aude*, 2018 WL 1634872, at \*3 (“[C]ourts need only consider the typicality and adequacy requirements.”). Here, the Complaint in the Action sufficiently pleads Rule 23(a)(1) numerosity and Rule 23(a)(2) common questions in a manner common to all Class members, including Torres.

The typicality requirement of Rule 23(a)(3) “is satisfied if ‘each class member’s claim arises from the same course of events, and each class member makes similar legal arguments to prove the defendant’s liability.’” *In re Orion Sec. Litig.*, No. 08 Civ. 1328 (RJS), 2008 WL 2811358, at \*5 (S.D.N.Y. July 7, 2008) (quoting *In re Drexel Burnham Lambert Grp., Inc.*, 960 F.2d 285, 291 (2d Cir. 1992)). “[T]he claims of the class representative need not be identical those of all members of the class. ‘[T]he typicality requirement may be satisfied even if there are factual dissimilarities or variations between the claims of the named plaintiffs and those of other class members, including distinctions in the qualifications of the class members.’” *Janbay v. Canadian Solar, Inc.*, 272 F.R.D. 113, 120 (S.D.N.Y. 2010) (quoting *Bishop v. N.Y. City Dep’t of Hous. Pres. & Dev.*, 141 F.R.D. 229, 238 (2d Cir. 1992)).

Torres’s claims are typical of those of the Class. Torres alleges, like all Class members, that Defendants violated the Exchange Act by making what they knew or should have known were false or misleading statements of material facts and/or by omitting to disclose material facts concerning Latch. Torres, like all Class members, purchased or otherwise acquired Latch securities during the Class Period at prices alleged to have been artificially inflated by Defendants’ misrepresentations or omissions, and was damaged upon the disclosure of those misrepresentations and/or omissions that drove Latch’s share price downward. These shared claims, which are based on the same legal theory and arise from the same events and course of conduct as the Class’s claims, satisfy the typicality requirement of Rule 23(a)(3).

The adequacy of representation requirement of Rule 23(a)(4) is satisfied where “(1) class counsel is qualified, experienced, and generally able to conduct the litigation; (2) there is no conflict between the proposed lead plaintiff and the members of the class; and (3) the proposed lead plaintiff has a sufficient interest in the outcome of the case to ensure vigorous advocacy.” *Foley v. Transocean Ltd.*, 272 F.R.D. 126, 131 (S.D.N.Y. 2011); *see also Dookeran v. Xunlei Ltd.*, No. 18-cv-467 (RJS), 2018 WL 1779348, at \*2 (S.D.N.Y. Apr. 12, 2018) (same).

As set forth in greater detail below, in Pomerantz, Torres has retained counsel highly experienced in vigorously and efficiently prosecuting securities class actions such as this Action, and submits her choice of Pomerantz to the Court for approval as Lead Counsel pursuant to 15 U.S.C. § 78u-4(a)(3)(B)(v). In addition to Pomerantz, Torres is also represented by the Bronstein, Gewirtz & Grossman, LLC law firm in this litigation. Moreover, Torres has submitted a signed Certification declaring her commitment to protect the interests of the Class (*see* Lieberman Decl., Ex. C), and the significant losses incurred by Torres demonstrate that she has a sufficient interest in the outcome of this litigation to ensure vigorous advocacy.

Further demonstrating her adequacy, Torres has submitted a Declaration attesting to, *inter alia*, her background, her investing experience, her understanding of the responsibilities of a Lead Plaintiff pursuant to the PSLRA, her decision to seek appointment as Lead Plaintiff, and the steps that she is prepared to take to prosecute this litigation on behalf of the Class. *See id.*, Ex. D.

**D. Torres Will Fairly and Adequately Represent the Interests of the Class and Is Not Subject to Unique Defenses**

The presumption in favor of appointing Torres as Lead Plaintiff may be rebutted only upon proof “by a member of the purported plaintiff class” that the presumptively most adequate plaintiff:

- (aa) will not fairly and adequately protect the interests of the class; or
- (bb) is subject to unique defenses that render such plaintiff incapable of adequately representing the class.

15 U.S.C. § 78u-4(a)(3)(B)(iii)(II).

Torres's ability and desire to fairly and adequately represent the Class has been discussed above. Torres is not aware of any unique defenses Defendants could raise that would render her inadequate to represent the Class. Accordingly, Torres should be appointed Lead Plaintiff for the Class.

## II. LEAD PLAINTIFF'S SELECTION OF COUNSEL SHOULD BE APPROVED

The PSLRA vests authority in the Lead Plaintiff to select and retain Lead Counsel, subject to Court approval. *See* 15 U.S.C. § 78u-4(a)(3)(B)(v). The Court should only interfere with Lead Plaintiff's choice if necessary to "protect the interests of the class." 15 U.S.C. § 78u-4(a)(3)(B)(iii)(II)(aa); *see also Kaplan v. S.A.C. Capital Advisors, L.P.*, 311 F.R.D. 373, 383 (S.D.N.Y. 2015) ("The PSLRA evidences a strong presumption in favor of approving a properly-selected lead plaintiff's decisions as to counsel selection and counsel retention." (quoting *Varghese v. China Shenghuo Pharm. Holdings, Inc.*, 589 F. Supp. 2d 388, 398 (S.D.N.Y. 2008))); *see also In re Molson Coors Brewing Co. Sec. Litig.*, 233 F.R.D. 147, 151 (D. Del. 2005).

Here, Torres has selected Pomerantz as Lead Counsel for the Class. Pomerantz is highly experienced in the areas of securities litigation and class actions and has successfully prosecuted numerous securities litigations and securities fraud class actions on behalf of investors, as detailed in its firm resume submitted herewith. *See* Lieberman Decl., Ex. E. In overview, Pomerantz is a premier firm in the area of securities litigation based in New York, with offices in Chicago, Los Angeles, Paris, France, London, U.K., and Tel Aviv, Israel. *See id.* For more than 85 years, Pomerantz has represented defrauded investors. *See id.* As lead counsel in *In re Petrobras Securities Litigation*, No. 14-cv-09662 (S.D.N.Y.), Pomerantz recently secured a recovery of \$3 billion on behalf of investors in the securities of Petrobras, the largest settlement ever in a class

action involving a foreign issuer and the fifth largest class action settlement ever achieved in the United States. *See id.* Petrobras is part of a long line of record-setting recoveries led by Pomerantz, including the \$225 million settlement in *In re Comverse Technology, Inc. Securities Litigation*, No. 1:06-cv-01825 (E.D.N.Y.), in June 2010. *See id.* More recently, as Lead Counsel on behalf of a class of Fiat Chrysler Automobiles N.V. investors, Pomerantz reached a \$110 million settlement on behalf of the class. *See id.*

As a result of its extensive experience in litigation involving issues similar to those raised in the instant Action, Torres's counsel, Pomerantz, has the skill, knowledge, expertise, and experience that will enable the firm to prosecute this Action effectively and expeditiously. Thus, the Court may be assured that by approving Torres's selection of Pomerantz as Lead Counsel, the members of the Class will receive the best legal representation available.

#### CONCLUSION

For the foregoing reasons, Torres respectfully requests that the Court issue an Order: (1) appointing Torres as Lead Plaintiff for the Class; and (2) approving proposed Lead Plaintiff's selection of Pomerantz as Lead Counsel for the Class.

Dated: October 31, 2022

Respectfully submitted,

POMERANTZ LLP

/s/ Jeremy A. Lieberman

Jeremy A. Lieberman

J. Alexander Hood II

James M. LoPiano

600 Third Avenue, 20th Floor

New York, New York 10016

Telephone: (212) 661-1100

Facsimile: (917) 463-1044

jalieberman@pomlaw.com

ahood@pomlaw.com

jlopiano@pomlaw.com

*Counsel for Elizabeth Torres and Proposed Lead  
Counsel for the Class*

BRONSTEIN, GEWIRTZ &  
GROSSMAN, LLC  
Peretz Bronstein  
60 East 42nd Street, Suite 4600  
New York, New York 10165  
Telephone: (212) 697-6484  
Facsimile: (212) 697-7296  
peretz@bgandg.com

*Additional Counsel for Elizabeth Torres*

CERTIFICATE OF COUNSEL PURSUANT TO INDIVIDUAL RULE II.D

Pursuant to Rule II.D. of the Individual Practices of the Honorable John G. Koeltl (“Individual Rule II.D.”), the undersigned counsel certifies that the foregoing memorandum of law contains 3,075 words, exclusive of the cover page, this certification of compliance, the table of contents, and the table of authorities, and is in compliance with the formatting rules of Individual Rule II.D.

Dated: October 31, 2022

/s/ Jeremy A. Lieberman  
Jeremy A. Lieberman